



David B. Cohen

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Public Hearing Date: January 9, 2007  
Land Use Action Date: March 6, 2007  
Board of Aldermen Action Date: March 19, 2007  
90-Day Expiration Date: April 9, 2007

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development  
Nancy Radzevich, Chief Planner  
Jean Fulkerson, Principal Planner

*For MK*

DATE: January 5, 2007

SUBJECT: **#466-06 - RICHARD GRANT** petition for a **SPECIAL PERMIT/SITE PLAN APPROVAL AND EXTENSION OF NONCONFORMING STRUCTURE** for an addition constructed to the rear of an existing three-family dwelling with an attached two-car garage at **62-64 ELM STREET**, Ward 3, **WEST NEWTON**, on land known as Sec. 23, Blk 24, Lot 4, containing approximately 16,600 s.f. of land in a district zoned Multi Residence 1.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information that will be presented at or after the public hearing that the Land Use Committee will consider in its discussion at a subsequent Working Session.

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**EXECUTIVE SUMMARY**

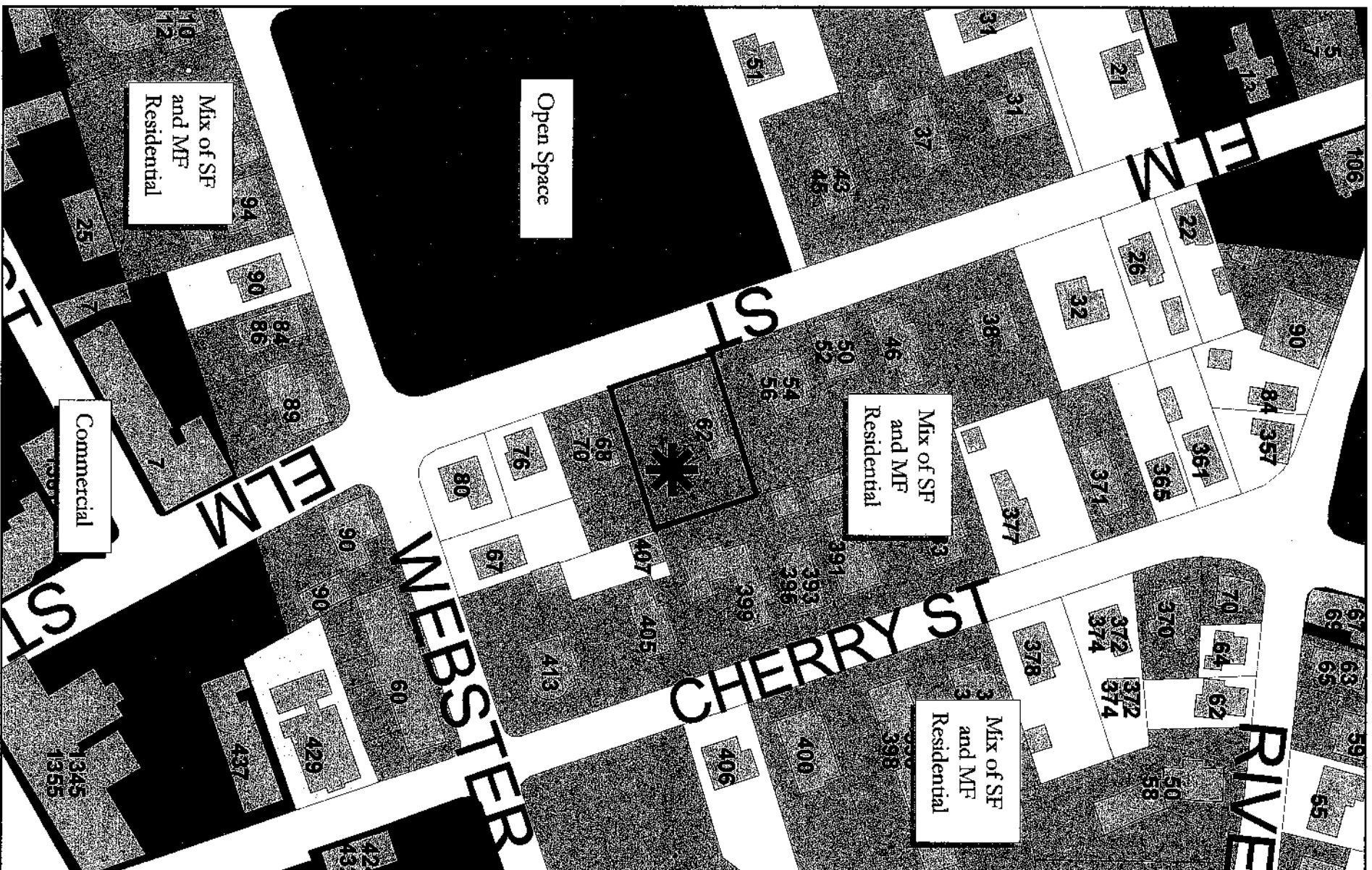
**The petitioner is seeking a special permit to extend/alter an existing legal non-conforming three unit multi-family dwelling in an MR1 District. The proposal calls for adding a 2,600 s.f. two-story addition in the rear of the property, including a two car garage, and reconfiguring the interior spaces of all three units. The petitioner is also requesting waivers to the parking ordinance related to the location of certain parking spaces as shown on the site plan. Although the petitioner received a by-right building permit in March 2006, after the construction had begun, it was later determined that the project would require a special permit. The petitioner agreed to stop all work on the project and to apply for a special permit.**

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# Land Use

## 62-64 Elm Street



### Land Use

- Single Family Residential
- Multifamily Residential
- Commercial
- Industrial
- Mixed Use
- Vacant Land
- Golf Course
- Open Space
- Private Educational
- Nonprofit Organizations
- Public Housing
- Tax Exempt

- Newton Boundary
- Property Boundaries
- Ponds/Rivers

- Streams
- Intermittent
- Perennial

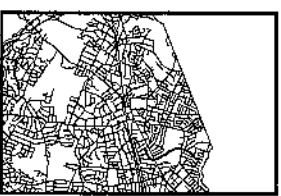
- Pond Names

- Buildings

- Street Names

- Stream Names

- Address Numbers
- 1" : 133.3'

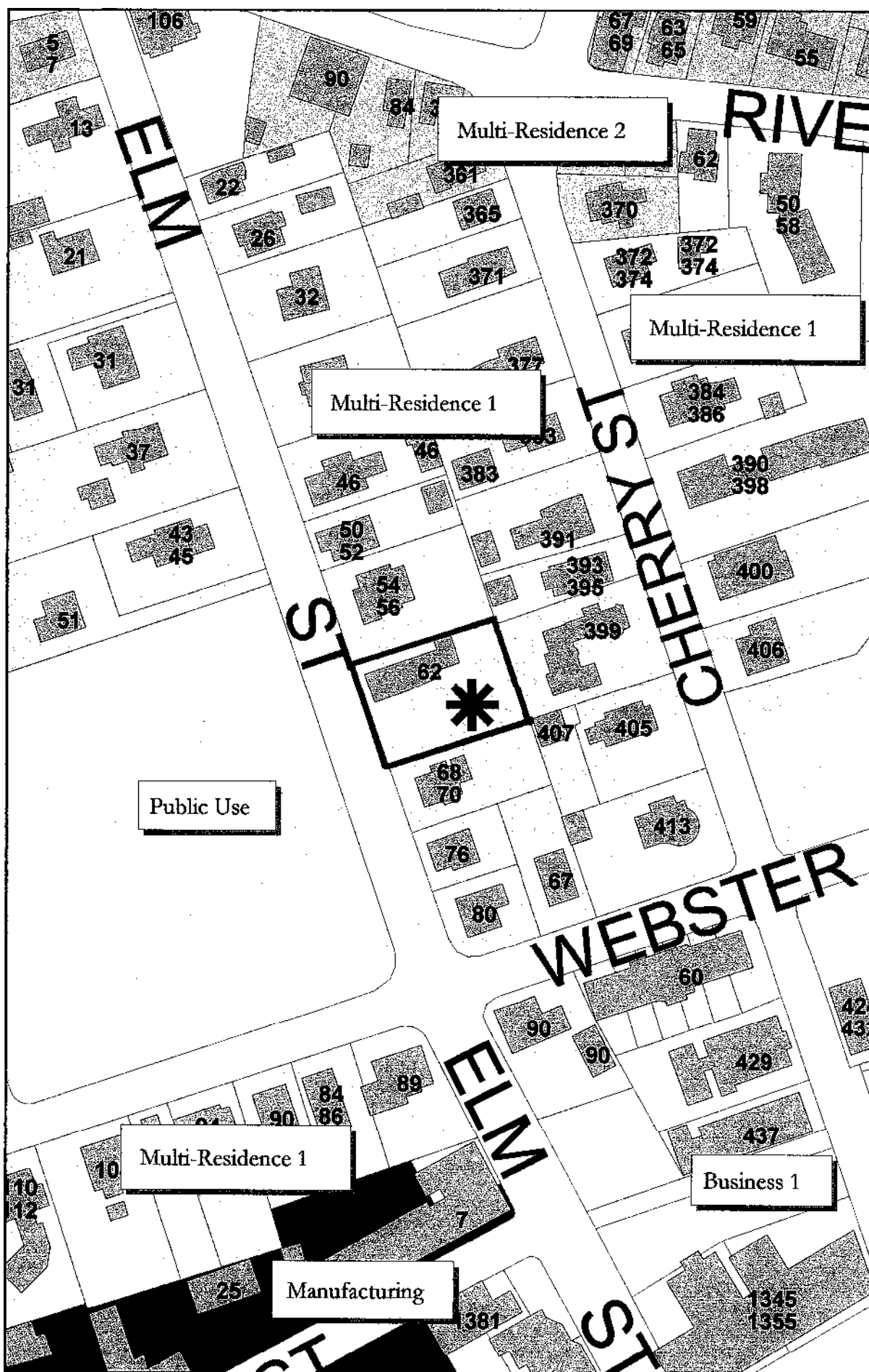


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City of Newton  
111 North Street  
Newton, MA 02459  
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## 01in-E07



## ZONING INFORMATION

ZONE: MR-1

DEED REFERENCE: BK 34967 PG 519

BUILD FACTOR = 7.4

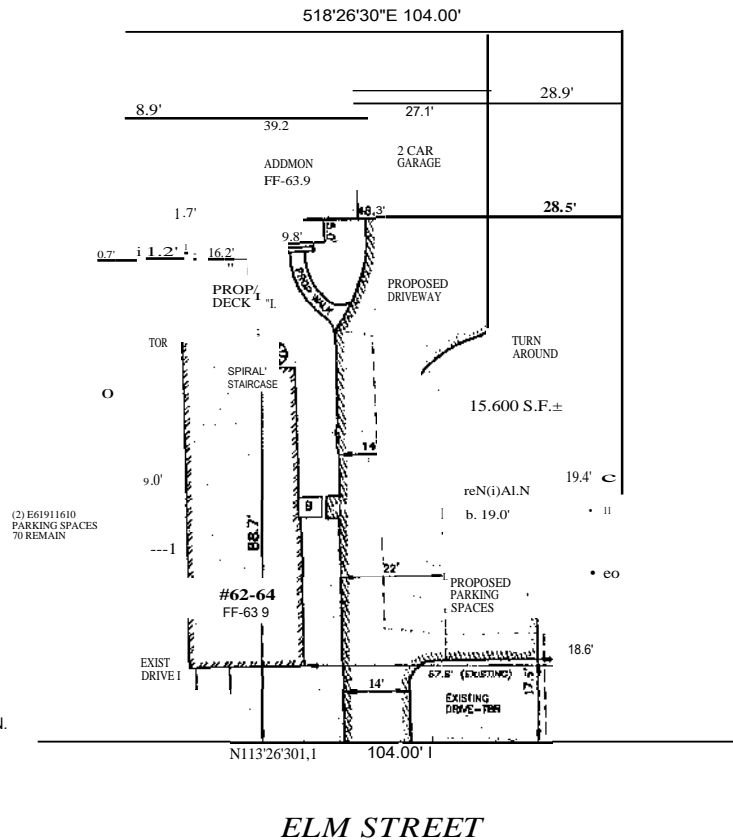
	EXISTING	PROPOSED	REQUIRED
SETBACKS			
FRONT	10.3'	88.7'	25.0' (MIN)
SIDE	0.7'	8.9'	7.5' (MIN)
REAR	48.0'	15.1'	15.0' (MIN)
BUILDINGS	1,998 S.F.	3,720 S.F.	
STRUCTURES	2,151 S.F.	3,798 S.F.	
DRIVE	2,094 S.F. ±	3,732 S.F.	
	4,245 S.F. ±	7,530 S.F.	
LOT COVERAGE	12.8%	23.8%	30% (MAX)
OPEN SPACE	73% ±	52% ±	50% (MIN)
FAR.	-	0.40	0.4 (MAX)
GARAGE		645 S.F.	
1st FLOOR		2,950 S.F.	
2nd FLOOR		2,640 S.F.	
		6,235 S.F.	

### NOTE

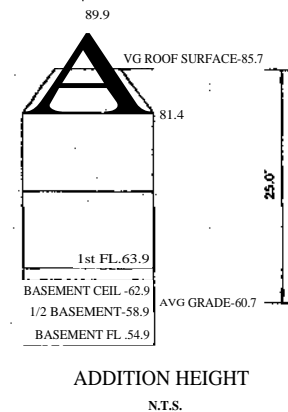
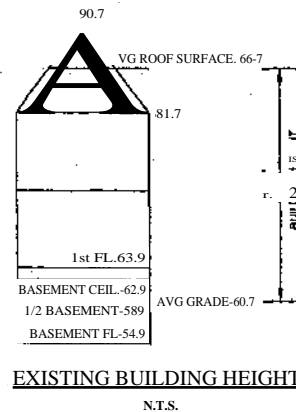
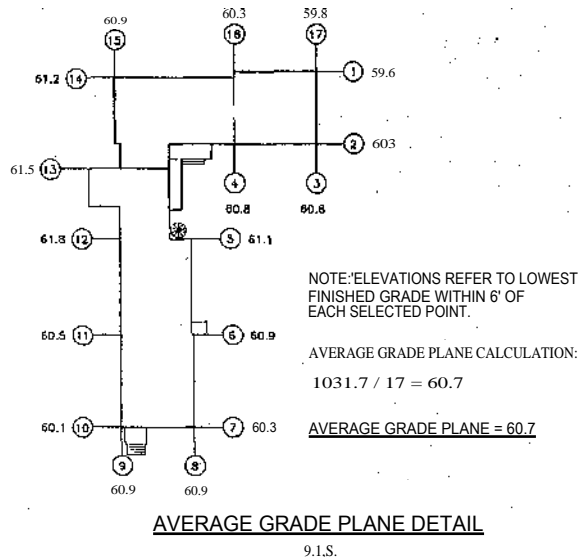
1. AREAS FOR F.A.R. CALCULATION PROVIDED BY ARCHITECT
2. ZONING COMPLIANCE DETERMINED BY MUNICIPALITY.

## SPECIAL PERMIT REQUESTS

1. 30-21(0(2)0)&0 APPROVAL FOR EXTENSION OF NONCONFORMING USE WITHIN MR-1 ZONE.
2. 30-19(m) APPROVAL FOR NEW PARKING SPACE IN FRONT YARD SETBACK.
3. 30-19(m) APPROVAL TO ALLOW 2 PREEXISTING PARKING SPACES TO REMAIN IN FRONT AND/OR SIDE YARD SETBACKS AND TO REMAIN IN STACKED CONFIGURATION.
4. 30-19(m) APPROVAL TO ALLOW EXISTING DRIVEWAY WIDTH AT THE LEFT SIDE LOT LINE TO BE 10'.



ELM STREET



NOTE:  
 THE EXISTING CONTOURS OF THE LAND ARE NOT TO BE ALTERED BY MORE THAN THREE (3) FEET AS A RESULT OF THE PLACEMENT OR REMOVAL OF SOIL, CLAY, GRAVEL OR STONE, OR OTHER SOLID MATERIAL

MIABLLGIED 1916  
**ENEB**

EVERETT M. BROOKS CO.  
 SURVEYORS & ENGINEERS  
 49 LEXINGTON STREET  
 WEST NEWTON, MA 02463  
 (617) 527-8790  
 (617) 332-1578 FAX  
 info@everettbrooks.com



0' 20' 40' 60'  
 N M L M N  
 M L N G M



## PLAN OF LAND IN NEWTON, MA

62-64 ELM STREET

PREPARED FOR:  
 RICHARD 1. GRANT  
 125 VERNON STREET, APT 1  
 NEWTON, MA 02458

SCALE: 1 IN. = 20 FT.  
 DATE: SEPTEMBER 6, 2006  
 DRAWN: ES  
 CHECK: MSK 4 BB

REVISIONS:  
 11/17/06 WALKS & TURN AROUND ES  
 12/6/06 OFFSET TO EXIST SPACE ES

PROJECT NO. 22221



## **I. BACKGROUND**

The petitioner began renovations on his property in March 2006 after receiving a building permit from the Inspectional Services Department. After framing was nearly completed it was discovered that the proposed expansion was an extension of a non-conforming use under Section 30-21(b) of the City's Zoning Ordinance and would require a special permit.

The petitioner agreed to stop work and began the steps necessary to apply for a special permit. The Commissioner of Inspectional Services allowed the petitioner to complete the installation of the roofing, "Tyvek" siding, windows, and doors, in order to protect the addition from the elements and provide security for existing tenants, however, it was with the understanding that all this work was at the petitioner's own risk.

The Planning Department's files contain no previous references to 62-64 Elm Street, and there is no previous board order governing the property.

## **II. ELEMENTS OF THE PETITION**

The petitioner is seeking a special permit to expand an existing legal three-unit multi-family dwelling in an MR1 (Multi-Residence 1) District. The proposal calls for adding a large 2,600 s.f. two-story addition in the rear of the structure, including a two-car garage, and reconfiguring the interior spaces to make three updated units. The two units at the front of the lot are stacked, with the first unit on the first floor, and the second unit located on the second and third floor, with a shared entrance off Elm Street. The third is located in the rear with separate primary and secondary access points.

The petitioner was able to establish through record files that the property has been in continuous use as a three-family dwelling since 1914. The Commissioner of Inspectional Services reviewed the petitioner's documentation and is satisfied that the property is a legal non-conforming use in the MR1 zone as stated in his letter dated November 7, 2006 (*SEE ATTACHMENT "A"*).

Although single- and two-family dwelling are permitted by right, and attached dwellings (for over 2 units) are permitted by special permit, the MR1 Zoning District does not permit multi-family family dwellings, either by right or special permit. The petitioner's representative has provided a letter detailing how the property fails to meet the definition of attached dwelling. (*SEE ATTACHMENT "B"*) The Planning Department notes that in a special request from 2005 for the property at 25 Paul Street, a structure with the same configuration as found at 62-64 Elm Street was defined as a three-unit multi-family structure.

In order to renovate and expand the non-conforming three unit multi-family structure, the petitioner is required to submit for a Special Permit under Section 30-21(b) of the Revised Zoning Ordinance.

In the existing structure, two of the three units are somewhat larger than the third unit and all the existing parking is surface parking. After the addition is completed the two units in the original front portion of the structure will be renovated and reorganized. The petitioner provided the following numbers as to the overall dimensions of the three living units:

62-64 Elm Street	Existing	Proposed
Unit 62 (first floor front)	1,020	1,380 s.f.
Unit 64 (second and third floor front)	1,620	1,830 s.f.
Unit 64R (rear)	1,460	2,900 s.f.
Garage	0	645 s.f.

The petitioner is also seeking relief in the form of waivers from the requirements of the parking regulations in the City's Zoning Ordinance. The property includes an existing driveway along the north side of the lot that the petitioner would prefer to retain. The existing driveway is substandard because:

- Its width is 10 ft. rather than the required 12 ft.;
- The parking spaces are tandem;
- It is located in the side yard; and
- It is located within the front yard setback.

In addition, the petitioner is proposing to remove what we believe to be an existing four (4) stall parking area that is located at the front lot line, directly adjacent to the sidewalk. It is proposed to be replaced with a new four (4) stall surface parking area on the south side of the existing structure, of which one of the new surface parking stalls is proposed to be partially located in the front setback. The proposed garage will provide parking for two additional vehicles. In total, with the existing and proposed surface parking areas and two-car garage, the petitioner is proposing eight (8) parking spaces, which is two more than required by ordinance.

### **III. ZONING RELIEF BEING SOUGHT**

*Based on the Chief Zoning Code Official's written determination, dated December 5, 2005 (see ATTACHMENT "C"), the petitioner is seeking relief from or approvals through the following sections of the Zoning Ordinance:*

- > *Section 30-21(a)(2)a) & b) for approval to extend a non-conforming use within the MR-1 zone.*
- > *Section 30-19(g)(3) and 30-19(m) for waiver to reduce driveway width from 12 ft. to 10 ft. for existing driveway along left side of lot line.*
- > *Section 30-19(d)(1) for approval to use stacked spaces in conjunction with 3F dwelling.*
- > *Section 30-19(g)(1) and 30-19(m) for waiver of front lot line parking setback from 25 ft. to 17.6 ft. for 1 proposed new space in the 4-space parking area.*
- > *Section 30-19(g) for waiver of front lot line parking setback from 25 ft. to 20.7 ft. for 1 existing space at the left side of lot line.*
- > *Section 30-23 for approval of site plan*
- > *Section 30-21(a)(2)a)&b) and 30-24 for approval of special permit.*



#### **IV. SIGNIFICANT ISSUES FOR CONSIDERATION**

*In reviewing this petition, the Board of Aldermen should consider the following:*

- *Whether the extension of the non-conforming use, in order to create three larger units, with a two-car garage, is substantially more detrimental to the neighborhood than the existing non-conforming use.*
- *Whether the expanded use is compatible with the surrounding neighborhood*
- *Whether the design, mass, and siting of the expanded structure is in character with existing structures in the neighborhood*
- *Whether the requested parking waivers will have an adverse impact on abutters or the surrounding neighborhood.*
- *Whether the requested waivers to the dimensional controls of the parking ordinance will have an adverse impact on pedestrian or vehicular safety.*

#### **V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

##### **A. Existing Site Conditions**

The 15,600 sq. ft., rectangular shaped subject lot is located within a MR-1 District, and is currently improved with a 3,629 sq. ft. three-unit multi-family dwelling and two separate paved parking areas, each with its own curb cut. The larger parking area is located on the south side of the lot at the front property line with no separation from the sidewalk. The original wood structure was constructed in 1900 in a simplified Italianate style on a brick and fieldstone foundation. The site appears to be level.



**Figure 1. Original Structure**



**Figure 2. Original Structure with Rear Addition**

B. Neighborhood

The subject lot is located in West Newton, one block north of the commercial area, and across from the West Newton Playground. The subject lot is located in a block bound by Elm Street, Webster Street, Cherry Street, and River Street, with a mix of single- and multi-family structures. With a few exceptions, most lots are at least 10,000 s.f. in size. There are no single-family lots abutting the subject site. All but one of the residential structures on Elm Street was built prior to 1900, making this a largely intact historic streetscape. Few lots are improved with garages, but where present, they are all detached. To the north of the site is a four unit 3,900 s.f. multi-family dwelling on a 14,400 s.f. lot, and to the south is a 2,576 s.f. 2 family structure on a 10,000 s.f. lot, and in the rear is a two-unit condominium of a total size of 5,148 s.f. on a 14,600 s.f. lot.

**VI. TECHNICAL ANALYSIS**

A. Dimensional Controls (Section 30-15)

Given that the subject property had consisted of two parcels, the Chief Zoning Code Official determined that the subject property, once the lots were merged, would retain its pre-53 status related to most of the dimensional controls, but would need to comply with the post-53 requirements for lot area and frontage. The following chart illustrates how the proposal for 62-64 Elm Street compares to the dimensional requirements for a by-right two-family dwelling in the MR1 District, based on the "hybrid" requirements for this lot.

<b>62-64 Elm Street</b>	<b>Ordinance</b>	<b>Existing</b>	<b>Proposed</b>
Min. Lot Size	10,000 s.f.	15,600 s.f.	15,600 s.f.
Min. Lot Area per Unit	5,000 s.f./unit	5,200 s.f./unit	5,200 s.f./unit
Min. Frontage	80 ft.	104 ft.	104 ft.
Setback			<i>setbacks of proposed addition</i>
Front	25 ft.	<b>10.3 ft.</b>	88.7 ft.
Side	7.5 ft.	<b>.7 ft.</b>	8.9 ft.
Rear	15 ft.	48 ft.	15.1 ft.
FAR	.4	.23	.4
Max. Bldg. Height	30 ft.	25 ft.	25 ft.
Max. # of Stories	2.5	2.5	2.5
Lot Coverage	30 %	12.8 %	23.8
Open Space	50%	73 %	52 %
Build Factor	20	7.4	7.4

As shown in the table above, the subject property complies with all of the dimensional controls except for the front and side setbacks of the existing structure, which are 10.3 ft. and 0.7 feet respectively. ***These front and side setbacks are permitted to continue under the "hybrid" requirements for this lot.*** The proposed addition brings the property to the maximum allowable FAR and nearly to the minimum allowable open space requirements.

**B. Parking Requirements (Section 30-19)**

The following chart illustrates how the proposal meets the applicable parking requirements for the parking facilities related to the proposed multi-family structure:

<b>62-64 Elm Street Parking Analysis</b>	<b>Ordinance</b>	<b>Existing</b>	<b>Proposed</b>
Min. # of parking stalls	6	6	8
Setbacks MR1 Zone			
Front	25 ft.	<i>0 ft. (main 4 car) 20.7 ft (tandem)</i>	<b>17.6 ft (main 4 car) 20.7 (tandem)</b>
Side	7.5 ft.	<b>unknown (main 4 car)</b>	18.8 ft. (main 4 car)
rear	15 ft.	<i>0 ft (tandem)</i> unknown	<b>0 ft (tandem)</b> 39.1 ft.
Min. stall dimensions	9 ft. x 19 ft.	unknown	9 ft. x 19 ft.
Entrance/Exit Drives			
Tandem driveway	12 ft. (min.)	<i>10 ft.</i>	<b>10 ft.</b>
Main parking area	14 ft.	unknown	14 ft.

As shown in the table above, the petitioner will need waivers for the parking facilities related to the front and side setback, and entrance width for the tandem parking area on the north side of the lot. A waiver is also necessary for one parking space within the main four (4) vehicle parking area to be located within the front yard setback.

C. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking.

The design of the new four stall parking area is an improvement over existing conditions because it provides more separation between pedestrians and vehicles entering/exiting, and parking at the site. The location of the four stall parking area also allows for installation of a planting bed with landscape screening. Even though the new surface parking area is pulled back further from the street one of the proposed spaces is still within the front setback with no clear reason from the petitioner as to why such a waiver would be necessary. The Planning Department notes that the location of the main surface parking area does allow for a modest area of usable open space for residents of the multi-family units. ***The petitioner is expected to comment upon the rational for this aspect of the site design at the public hearing.***

The proposal also calls for building garage parking for two vehicles, which is dedicated for the use of the rear unit. ***There appears to be a significant amount of excess pavement adjacent to the new garage, which though it is intended as a turn-around for exiting vehicle, looks as though it can accommodate parking spaces for at least two additional vehicles, in tandem, in front of the garage.***

At a pre-filing meeting with the petitioner, the Planning Department staff questioned the need for the excess parking and strongly urged the petitioner to eliminate the existing two-stall parking area on the north side of the house, since the required 6 stalls were being provided in the new surface lot and garage. While the petitioner indicated that they wanted to keep these stalls out of convenience, the stalls are stacked, in tandem in the side yard. Given the location of the structure in relation to these spaces, the drivers are backing out blindly, until they have a clear sight line beyond the structure. From the submitted plan, the stall farthest from Elm Street encroaches onto the side lot line. Further, the Planning Department is also concerned that the retention of the tandem parking area on the left (north) lot line represents unnecessary impervious surface.

The Planning Department does not believe that the excess parking is necessary for a three-family structure, particularly given the structure's proximity to the West Newton village center and public transportation options. The Planning Department recommended to the petitioner that these spaces be removed at a pre-filing meeting. Given the size of the addition, and the increase in size of the parking area and driveway on the south side of the existing structure, the existing tandem parking area on the north property line would better serve as open space for the property. The presence of a second curb cut on to the property is also a safety concern.

According to Section 30-19(m), "....the board of aldermen may, in accordance with the procedures provided in section 30-24, grant a special permit to allow for exceptions to the provisions of this section [Section 30-19] if it is determined that literal compliance

is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety or protection of environmental features."

The Planning Department does not believe the petitioner has provided any evidence that it is "impracticable" to comply with the provisions of Section 30-19 and do not believe that any of the requested waivers are in the public interest or in the interest of safety or protection of environmental features.

***The Planning Department continues to recommend that the existing parking area, driveway and curbcut on the north side of the building be removed and that the surface parking be moved further back, to comply with the front setback requirements. Further, the Planning Department recommends that the petitioner look at possible ways to redesign the new parking facilities to minimize the amount of excess impervious surface.***

The Newton Fire Department date stamped its approval of the plans on March 8, 2006.

2. Screening of parking areas and structures on the site from adjoining premises or from the street by walls, fences, plantings, or other means.

The main surface parking will be screened from the property to the south at 68 Elm Street by a 6-ft. high wooden fence. The Planning Department would prefer that the main surface parking area also have some screening from the street. Although the landscape planting plan provided by the petitioner, dated August 20, 2006, shows a landscaped planting bed in the area between the Elm Street sidewalk and the surface parking area, this area is shown to be planted with deciduous plants exclusively and will not provide screening in the winter months. *The Planning Department requested that the petitioner revise the landscape plan by adding some evergreen material, of various heights and species, to this planting bed.*

The tandem parking area is not proposed to be screened at all as the pavement is close to or on the side lot line and there is no physical space to install landscape materials. ***The Planning Department recommends that these parking stalls, driveway and curbcut be removed and this area be planted with grass and other landscaping materials.***

3. Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage.

The Associate City Engineer's written report states that the drainage calculations provided by the petitioner are correct (*SEE ATTACHMENT "D"*). The Engineer notes that the existing sewer service dates back to 1895 and should be replaced. In addition, he requests that as a public benefit, the existing bituminous concrete sidewalk, which is in poor condition, be replaced with a new cement concrete sidewalk and granite curbing.

According to the Associate City Engineer, the site plan is missing a construction detail related to the driveway apron. The petitioner will need to provide this information prior to the working session.

4. Consideration of the site design, including the location and configuration of structures and the relationship of the site's structures to nearby structures in terms of major design elements including scale, materials, color, roof and cornice lines.

The existing structure is a long, narrow building aligned along the north property line and is just over 75 ft in depth and 33 ft. in width. With the proposed addition along the rear of the lot, the structure is extended another 30 ft. toward the rear lot line, resulting in an "L" shape structure, 100 ft. deep and 77 ft. across. *Although there is an existing bump-out on the north facade, the Planning Department is concerned with the mass of the structure and the presence of 100 ft. long uninterrupted building wall along the north property line and the impact it will have on the abutting property and the streetscape in general* The Planning Department consistently discourages prospective special permit applicants from designing structures with long, uninterrupted walls because of the unsightly massing. If the petitioner had designed the addition to be located closer to the front lot line, then this sidewall could have been shortened, and more of the rear yard of the property maintained as usable open space. As it is, the unit on the first floor at the front of the structure has no usable adjacent open space.

The Planning Department is also concerned about the impacts of the addition on the abutting property at 399 Cherry Street. The Planning Department appreciates that the architectural plans show that the garage is a one-story structure with an overhead deck which helps to reduce the mass of the building. The petitioner also attempted to incorporate some of the architectural elements of the original structure into the addition. Because much of the exterior was already completed, through the issuance of a by-right building permit, it is evident that the design work is of high quality, however, the proposed addition is as large as a stand alone single-family structure, and will have a significant impact on the surrounding properties because it increases the building mass in direct view of abutting properties. Prior to the construction of the addition, the openness of the rear yard allowed abutting properties a view of open space and the West Newton Playground, a view that is now blocked.

The Planning Department notes that if this structure were to be converted to a two-family uses, The petitioner could build the proposed addition without the need for a special permit, as long as a site plan was submitted showing that the associated required parking facilities comply with the requirements of Section 30-19.

D. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use/structure.

The City's Zoning Ordinance does not permit multi-family structures in the MR1 District, either by right or special permit. The existing structure was determined to be a legal, non-conforming three-unit multi-family use, which pre-dates use requirements in the Zoning Ordinance.

The size of the proposed addition will make the subject structure the largest residential building on the entire block, at 6,235 and potentially out of scale with the neighborhood. The next largest structures are a two-unit condominium at 5,148 s.f., and a four unit multi-family structure at 3,900 s.f.. Other two families on this block range in size between 2,100 s.f. up to 3,300 s.f.. The existing structure at 62-64 Elm Street at 3,610 s.f.

was already one of the larger structures on the block.

The results of the technical analysis section re-enforce concerns over the size given that the proposed addition pushes the FAR and Open Space requirements to the limit of what is allowed under the Revised Zoning Ordinance.

2. The use as developed and operated will not adversely affect the neighborhood

The addition onto the rear of the existing structure is substantial. If approved by the Board, it would allow the petitioner to greatly expand the number of bedrooms in each **unit**. *While the existing building does already have 3 units, the reorganization and expansion of each of the individual units with more bedrooms and baths, represents a significant extension of the non-conforming use. The petitioner's desire to have 8 designated parking stalls on-site, which is two more than exists and two more than required by ordinance, seems to indicate that the petitioner believes that the increased structures will likely increase the number of residents on the property.* More residents means more vehicle trips, more visitors, and more impact on the surrounding neighborhood.

62-64 Elm Street	Existing	Proposed
Unit 62 (First Floor Front)	2 Bed/ 1 Bath	3 Bed/2 Bath
Unit 64 (Second and Third Floor Front)	4 Bed/1 Bath	5 Bed/2 Bath
Unit 64 R (First Floor Rear)	2 Bed/1 Bath	3 Bed/2 1/2 Bath
<b>Total</b>	<b>8 Bed/3 Bath</b>	<b>11 Bed/6 1/2 Bath</b>

Each of the units in the building has the potential to house four unrelated individuals, for a total of 12 unrelated persons. This increases the potential for the number of cars and vehicle trips to greatly exceed current conditions. The 2,600 s.f. addition represents an increase in size of 72 percent, or nearly three-quarters of the existing structure.

The Planning Department believes that if the number of permitted on-site parking spaces is reduced, then the number of potential vehicles and vehicle trips can be reduced. *The Planning Department recommends that if the special permit for the expanded structure is approved, that it be conditioned on the removal of the two existing tandem parking spaces, driveway and curbcut on the north side of the existing building.*

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

Given the proposed size of the units and the number of bedrooms, the Planning Department believes that as proposed the extension of this three-family use is expected to bring more vehicles and vehicle trips into the site. For this reason, the Planning Department recommends the petitioner remove the tandem driveway on the north property line to reduce the potential safety issues and to reduce the potential for residents to have excess vehicles on site. The parking area is redundant to what is being proposed elsewhere on site and is a potential safety hazard for pedestrians and

vehicles as the drivers will have to back out, blindly for a portion of the way, out into public walkway and Elm Street.

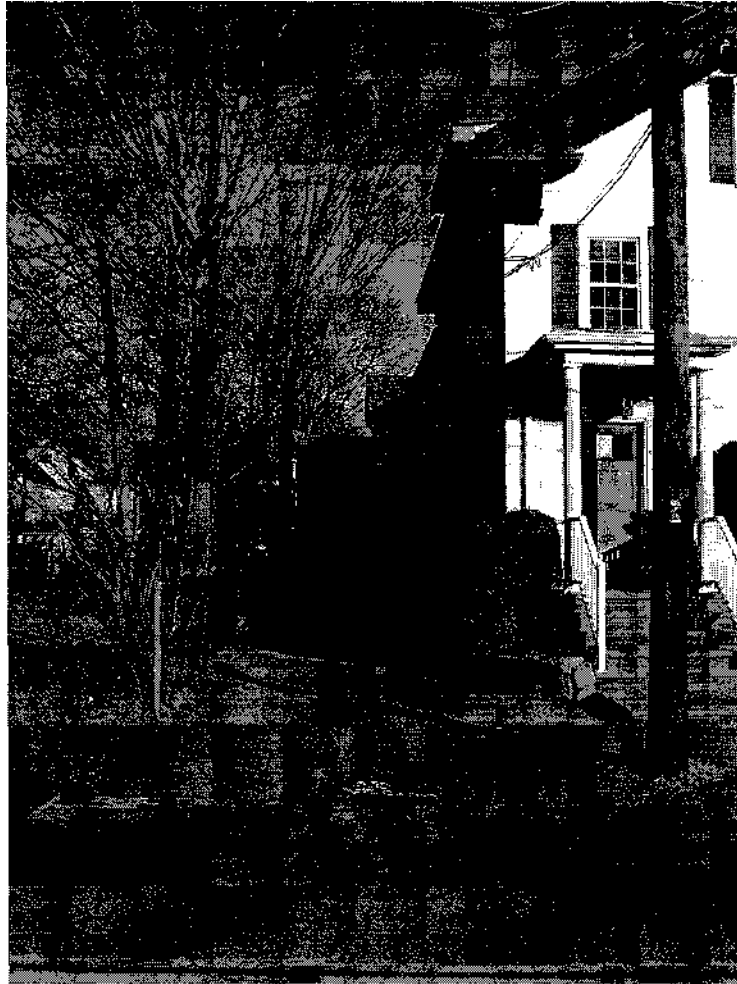


Figure 3. Existing tandem driveway on north side of property

E. Section 30-21(b) Analysis

The Planning Department recognizes that the petitioner could convert the three-family structure into a two-family and have the ability to construct the proposed addition by-right, as long as they developed a plan for the parking, which would comply with Section 30-19. The addition itself meets all applicable zoning constraints for setbacks, lot coverage, and FAR for a two-family residence, however, as an extension of a non-conforming use, the Planning Department is concerned that a larger, more intensive use of the site for a three family use may be substantially more detrimental to the neighborhood because of its massing, and the potential for an increase in the number of residents and vehicle traffic. The presence of six surface parking spaces, three of which **do not** meet the parking regulations in the zoning ordinance, and the proposed size of the units allow for a potential capacity that goes beyond what is intended in an MR1 zoning district.

The overall scale of the proposal would make it the largest structure on Elm Street; larger even than the comparatively modest four unit apartment structure at 3,900 s.f. . just to the



north of the subject site at 54 Elm Street. Even in that example the four apartment units are contained within the original structure. The 100 ft. long façade would be substantially more detrimental to the property at 54 Elm Street and to the overall streetscape.

The Planning Department recommends that should the Land Use Committee approve the extension of the non-conforming use, that it limit the owner's ability in the future to make any changes or further expansion to the structure, other than normal repairs, in the future. For example, the deck above the garage should not be enclosed and changed to interior space, dormers should not be added to the second floor in the rear, and no additional bedroom space should be added to any of the residential units.

#### **F. Draft Comprehensive Plan Analysis**

The Planning Department reviewed the proposed extension of the three-unit multi-family structure relative to the City's Draft Comprehensive Plan, which is currently under review by the Planning and Development Board for a recommendation to the Zoning and Planning Committee of the Board of Alderman.

One important aspect of the Draft Comprehensive Plan is that it proposes to focus additional housing in the City around village centers and public transportation. In the section titled "Residential Implementing Actions" the Comprehensive Plan suggests that opportunities should be found for serving small households in mixed single and two-family areas through "adaptation and expansions onto existing structures," and that areas that can support high density multi-family uses should be expected and "in appropriate cases, welcomed." The Plan states that multi-family areas "provide an important means through which creation of housing choice and affordability has been served in the past and can be served in the future."

The Draft Comprehensive Plan does not recommend going so far as to identify and map out areas where existing structures can be expanded to provide addition housing. Instead the Draft Plan states that "locations for creation of future areas of this category should each be considered individually in response to proposals, rather than being rigidly mapped in advance, in order to reflect the location and performance of criteria of this plan together with the dynamics of community change." There is also a desire in the Draft Plan to re-use existing structures to achieve preservation and open space goals and savings in material and energy efficiency.

The subject property at 62-64 Elm Street appears to be in an area of the City where there is some potential for additional housing units along the lines of the Draft Comprehensive Plan. The subject property is located within a block of the West Newton village center, and the commuter rail line going into the City of Boston. Given the size of the lot, its proximity to a commercial center and public transportation options, this would appear to be an appropriate site for a three-family dwelling, despite its non-conforming status.

One of the other goals of the Draft Comprehensive Plan is to maintain and add to the economic diversity of housing in the City, particularly for those people who cannot afford to buy housing in Newton given median housing value, but also who do not qualify for affordable housing. While the Planning Department believes that a three-family use can be appropriate for this site under the right circumstances, the enlargement of the third unit from 1,460 s.f to 3,530 (excluding the garage) does not re-enforce the Draft Plan's recommendation for economic diversity of housing. The Planning Department would recommend that the size of the addition

be reduced, and the re-alignment of interior spaces be done in such a way to provide a variety of housing sizes and/or that one of the three units be converted to an affordable housing unit.

## **VII. SUMMARY**

The Planning Department is concerned that the significant size of the proposed addition and the unit mix allows a three-family use that was not intended for the MR 1 zoning district and will be detrimental to the surrounding neighborhood. The MR1 zone allows for two-family uses by-right, and there are many examples of two-families on Elm Street and behind it on Cherry Street. The strictest interpretation of the City's Revised Zoning Ordinance would dictate that the proposed extension of the non-conforming three-family is likely to have an adverse impact on the neighborhood because of the:

- absolute size of the addition, which is comparable to a stand alone single family structure,
- number of vehicles that will be entering and exiting the site,
- the loss of open space as a result of the surface parking facility and rear addition,
- the unnecessary hazard presented by the tandem parking space, and
- the presence of a long uninterrupted facade in a neighborhood of more modest structures.

The benefit of a two-family or three family structure of a more modest scale at this site would include a reduction in the impact of the driveway and parking area, increased open space, and fewer conflicts with pedestrians on Elm Street. The petitioner does not currently live in the structure. If he did, then another alternative would be for the petitioner to create a two-family with a small accessory apartment.

In light of the goals outlined in the Draft Comprehensive Plan, the Planning Department suggests that the Land Use Committee consider the appropriateness of a three-family structure in this location, particularly if one of the units were to be designated as affordable under the City's Inclusionary Zoning Ordinance. The continued and expanded use of this three-family structure appears in some of its aspects to fall in line with the strategies of the Draft Comprehensive Plan.

Prior to the Working Session the petitioner should:

- **revise the landscape plan to provide additional screening,**
- **revise the Site Plan to show the replacement of the sewer service, sidewalk, and provide the driveway detailed required by the Engineering Department, and**
- **revise the site plan to reduce the amount of impervious surface on the lot.**

City of Newton



David B. Cohen  
Mayor

## Inspectional Services Department

John D. Lojek, Commissioner  
1000 Commonwealth Avenue  
Newton Centre, MA 02459-1449  
Telephone: (617) 796-1060  
Fax: (617) 796-1086  
[www.ci.newton.ma.us](http://www.ci.newton.ma.us)

## ATTACHMENT A

(617) 796-1070  
Electrical Division  
(617) 796-1075

November 7, 2006

G. Michael Peirce, Esq.  
Van Wert, Zimmer & Conlin, P.C.  
245 Winter Street, Suite 400  
Waltham, MA 02451-8709

Re: 62-64 Elm Street/Three Family Non-conforming

Dear Mr. Peirce:

I am in receipt of your letter of October 27, 2006 and research concerning the above property. I have also taken the occasion to visit the site.

The research that you have submitted suggests that this property has been used as a three unit building since 1914 and thereafter. While there is some variation in the building record, the preponderance of the evidence shows a building that has been used as a three family house, pre-dating zoning. Therefore, I have concluded that it is a pre-existing non-conforming 3-unit building. I understand that some zoning relief is necessary to complete the proposed project.

In order to complete the process, the completed building must be inspected by this department and the Fire and Health Departments so we may issue a certificate of occupancy for the premises.

I look forward to your resolution of any outstanding code items and hope this letter serves your purposes. Please feel free to contact me if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Lojek".

John D. Lojek, Commissioner  
Inspectional Services Department

cc: Property file

*Strict code enforcement makes the city safer  
Before buying, renting or leasing check zoning*

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**Van Wert, Zimmer & Conlin, P.c.**  
**COUNSELORS AT LAW**

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G. Michael Peirce  
Direct Dial: 781-314-0115

Facsimile: 781-314-0101  
E-mail: mpeirce@vwz.com

January 5, 2007

Nancy Radzovich, Chief Planner  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Re: 62-64-66 Elm Street

Dear Nancy:

I am writing to briefly respond to a question raised as to whether the new construction at the rear of this preexisting, legal, non-conforming, three-family house, if separately meeting the criteria for an attached dwelling, would require that the petition should also include waivers of the dimensional controls applicable to attached dwellings. Based upon prior consideration of this issue by inspectional services, most recently in connection with the proposed project for 25 Paul Street, it has been determined that if all units in a proposed or modified structure do not qualify as attached dwellings under the ordinance definition then the total structure as a whole does not qualify nor is subjected to the dimensional controls for an attached dwelling. Here, just as in the case of 25 Paul Street, since the front two (2) units do not both qualify as attached dwellings, in that they do not each have two entrances/exits at ground level, whether or not the additional construction at the rear would have such a configuration is not determinative. In other words, this is just as generally stated in Commissioner Lojek's determination letter: an extension of a legal non-conforming, three-family house.

As stated, this determination is consistent with many past prior determinations by this and previous inspectional services departments. If you have any questions in addition please do not hesitate to contact me.

Ve truly yours,

G. Michael eirce

Cc: Richard Grant

# ***Zoning Review Memoranc***

**ATTACHMENT C**

Dt: November 9, 2006

To: G. Michael Peirce, representing Richard J. Grant  
Fr: Juris Alksnitis, Chief Zoning Code Official

Cc: Michael Kruse, Director, Department of Planning and Development  
John Lojek, Commissioner of Inspectional Services

**Re: Proposed major addition expanding existing 3F house in MR-1 zone.**

**Applicant: Richard J. Grant**

**Site:** 62-4 Elm St., W. Newton

**SBL:** Section 23, Block 24, Lot 04

**Zoning:** Multi-Residence 1

**Lot Area:** 15,600 sq. ft. (2 parcels)

**Current use:** Three-family dwelling

**Prop. use:** Larger 3F dwelling

## Background:

The petitioner believes that the existing dwelling is a non-conforming three-family dwelling and seeks to construct a large "L" type addition at the back. The subject addition would allow the expansion as well as reconfiguration of the existing three-family building in a significant manner. The applicant had received a building permit dated March 16, 2006 (See BP#06010816) and believed that the proposed expansion was consistent with the Zoning Ordinance as to alteration of a pre-existing nonconforming three-unit dwelling. However, the Inspectional Services Department subsequently issued a stop work order upon determination that the scale of the addition would increase the nonconforming use to a significant extent, necessitating Board of Aldermen approval for the extension of a nonconforming use and building pursuant to Section 30-21(a) and (b).

## Administrative determinations

1. The subject property is located in an MR-1 zone, which allows single and two-family dwellings by right, but not three-family dwellings. As noted above, a stop work order was issued by ISD, due to the scale of the addition, which in the opinion of the Commissioner increased the subject nonconforming use and building in a significant manner triggering the requirement for approval by the Board of Aldermen pursuant to Section 30-21(a) and (b).
2. At the time of adoption of Zoning by the City in 1922, the subject site was located within an area on the eastern side of Elm St. originally zoned General Residence, which allowed residential uses with more than two units as of right. The City's Zoning Atlas subsequently classifies the same area as Private Residence in 1940, which limits residential use to two-family dwellings. In 1987, Private Residence zones were renamed Multi-Residence-1, maintaining the two-family dwelling limitation up to the current time.

ISD file history suggests the subject property has had three-family and two-family uses at various times. The applicant's attorney has provided a summary by letter dated October 27, 2006, pointing to frequent use as a three-family dating back to 1914. While the subject building needs to be a continuous valid non-conforming three-family use up to the time of filing the petition for extension of non-conforming use, some records suggest 2F use also occurred (see building permits in 1932, 1933, and 1941). The applicant is responsible for

confirming that the three-family use has not been abandoned at some point after 1940 and prior to the current petition. The Commissioner of Inspectional Services has the discretion to make an appropriate determination based on receipt of satisfactory documentation.

Provided continuous nonconforming status of the existing 3F is confirmed to the satisfaction of the City, Board of Aldermen approval for an extension of nonconforming use would be necessary for the proposed addition pursuant to 30-21(a)(2) and (b).

3. Title examination of the subject property by the petitioner's attorney found that the site consists of two parcels not shown on the submitted survey plan. These lots have been held in tandem by a series of owners over the years for an extended period of time to the present. The petitioner will need to file a record plan at the Registry of Deeds in order to eliminate the currently existing interior lot line. Upon doing so, the site would become subject to the provisions of Section 30-26, which governs changes in the shape and size of lots. Analysis of the applicable provisions of this section indicates that the site would largely retain its pre-53 status, but would also need to comply with the lot area and frontage requirements applicable to post-53 lots as provided in 30-26(b)(5).
4. *Section 30-15, Table 1, Density & Dimensional Controls in Residence Districts and for Residential Uses (Table 1)* establishes the applicable controls pertaining to residential buildings on pre-53 lots in the MR-1 zone. While it appears that the proposed development largely meets these requirements, insufficient information has been provided as to the  $\frac{1}{2}$  story calculation and related FAR calculation. Although this information has been requested from the petitioner, it has not been received to date. In the event total FAR exceeds 0.4, the applicant will need to seek a special permit per Table 1, Footnote 5 for an increased FAR. It is noted that the site meets the lot area and frontage requirements pertaining to post-53 lots consistent with Section 30-26(b)(5) as discussed in item 3. above.
5. *Section 30-19(d)(2)* requires 2 parking spaces per dwelling unit and *30-19(g)* establishes the layout requirements for a parking facility containing 5 or fewer stalls. The proposed 6 new parking spaces (2 in garage; 4 outside) meet the above requirements. However, the proposed new outdoor parking space closest to the street is located within the front setback, necessitating a waiver from the Board of Aldermen per Section 30-19(m).
6. It is also noted that two currently existing parking spaces located along the left side lot line are within the front and left setbacks. While one parking space per dwelling unit is allowed within certain setbacks in conjunction with 1F and 2F dwellings, such placement is not available under 30-19(g) for three-family dwellings. Also, while the applicant may believe that these spaces are pre-existing nonconforming spaces, no factual information has been provided documenting that the spaces existed in the current configuration prior to March 21, 1977 when the requirements now in force were adopted by the City. It is also noted that parking spaces were prohibited from location within the required front and side setback distances at a substantially earlier time per the Revised Ordinances of 1952, Sec. 23.1. Although these spaces are not required under 30-19(d)(2), since the applicant seeks to retain the spaces, a waiver per Section 30-19(m) will be necessary. Alternatively, the applicant may remove the spaces. Moreover, Section 30-19(d)(1) allows "stacked" spaces only in relation to 1F or 2F dwellings. Should the applicant retain the spaces, an additional 30-19(m) waiver to allow stacked spaces is necessary.

In addition, neither the existing drive to these spaces, nor the associated curb cut have been dimensioned on plan. As a result, it is not possible to determine whether these conform to Section 30-19(g)(3) or whether a waiver per Section 30-19(m) is necessary.

7. Section 30-15(p) establishes that lots recorded after September 16, 1996 are subject to certain maximum Build Factor (BF) thresholds, depending on the zone wherein located. The proposed combined lot to be recorded must have a BF of not more than 20, to meet the applicable MR-1 BF limit. The applicant's attorney has advised that the BF will be 7.4 which meets this requirement.
8. See "Zoning Relief Summary" below.

<i><b>Ordinanc</b></i>	<i><b>Zoning Relief Summary</b></i>	<i><b>R</b></i>
30-15, Table 1, Footnote 5	Approval to exceed FAR of 0.4 in the MR-1 zone. (See item #4	TBD*
30-21(a)(2)a) & b) 30-21(b)	Approval to extend nonconforming 3F use within the MR-1 zone. (See item #2)	TBD*
30-21(b)	Approval for continued use of 2 existing parking spaces within required side and front setbacks as extension of nonconformin <sup>g</sup> use. See item #6	TBD*
30-19(g)(3) 30-19(m)	Waiver of driveway width from 12 ft. to undetermined width for existing driveway along left side lot line. (See item #6	TBD*
	<b>Parking</b>	
30-19(d)(1) 30-19(m)	Approval to use stacked spaces in conjunction with 3F dwelling.	X
30-19(g)(1) 30-19(m)	Waiver of front lot line parking setback from 25ft. to 17.6 ft. for 1 proposed new space in the 4-space parking area.	
30-19(g)(1) 30-19(m)	Waiver of side lot line parking setback from 7.5ft. to 0 ft. for existing 2 spaces at the left side lot line.	
30-19(g)(1) 30-19(m)	Waiver of front lot line parking setback from 25ft. to undetermined distance for 1 existing space at the left side lot line.	TBD*
30-5(b)(4) 30-23	Approval of grade change exceeding 3 ft.	N/A
30-23	Approval of site plan.	X
	N/A	
30-21(a)(2)a)& b) 30-24(d)	Approval of special permit.	X

\*TBD = To be determined

**Plans reviewed:**

- Plan set titled "Grant, Newton, MA", dated 9/18/05, last revised 1/24/06, prepared by PF Architects, LLC, 55 Presley St., Malden, MA 02148, stamped and signed by Pedro Fagundo, Registered Architect, consisting of the following:
  - > Title Sheet

- > A0.2 – Site Plan
  - > A1.0 – A1.2 -- Existing/Demo Floor Plans
  - > A2.0 – Proposed Basement Plan
  - > A2.1 – Proposed First Floor Plan
  - > A2.2 – Proposed Second Floor Plan
  - > A2.3 – Proposed Third Floor Plan
  - > A2.4 – Proposed Roof Plan
  - > A4.0 – A4.1 -- Exterior Elevations
- Plan titled "Plan of Land in Newton, MA, to Accompany the Petition of Richard J. Grant, 125 Vernon St., Apt. 1, Newton, MA", showing general area of site, dated September 6, 2006, last revised November 1, 2006, prepared by Everett M. Brooks Co., Surveyors & Engineers, 49 Lexington St., West Newton, MA 02465, stamped and signed by Bruce Bradford, Registered Professional Land Surveyor.
  - Plan titled "Plan of Land in Newton, MA, 62-64 Elm Street prepared for Richard J. Grant, 125 Vernon St., Apt. 1, Newton, MA", dated September 6, 2006, last revised 11/1/06, prepared by Everett M. Brooks Co., Surveyors & Engineers, 49 Lexington St., West Newton, MA 02465, stamped and signed by Bruce Bradford, Registered Professional Land Surveyor.
  - Plan titled " Landscape Plant. Plan, Richard Grant House, 62/64 Elm St., Newton, Mass.", dated 8/20/06, bearing stamp but not signature of John T. Judge, Registered Landscape Architect.

#### **Related Materials and Information**

- Letter from. G. Michael Peirce, Esq., September 13, 2006, Re: 62-64 Elm St./Extension of non-conforming three-family house.
- Memorandum from G. Michael Peirce, Esq., September 13, 2006, Re: Elm St. title history/30-26 requirements.
- Letter from G. Michael Peirce, Esq., October 27, 2006, Re: 62-64 Elm St./Three-Family Non-Conforming.
- Letter from G. Michael Peirce, Esq., November 6, 2006, Re: 62-64 Elm St./Three-Family



**CITY OF NEWTON  
ENGINEERING DIVISION**

**MEMORANDUM**

To: Ald. George Mansfield, Land Use Committee Chair.

From: John Daghlion, Associate City Engineer

Re: Special Permit – 62-64 Elm Street

Date: January 4, 2007

CC: Lou Taverna, PE City Engineer (via email)  
Nancy Radzevich, Chief Planner (via email)  
Linda Finucane, Associate City Clerk (via email)  
Jean Fulkerson, Planner (via email)

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In reference to the above site, I have the following comments for a plan entitled:

*Site Plan of Land in  
Newton, MA  
62-64 Elm Street  
Prepared by: Everett M Brooks Company  
Dated: January 31, 2006  
Revised: 2/21/06  
8/28/06  
11/17/06*

Drainage:

- The drainage analysis is correct for the City of Newton's 100-year storm event.

Sewer:

- The existing sewer service dates back to 1895 and should be replaced.

General:

1. As a public benefit, the existing bituminous concrete sidewalk [which is in poor condition] should be replaced with new cement concrete sidewalk and granite curbing.
2. The site plan is missing the City's Standard Construction driveway detail. Driveway aprons must comply with ADA, and the Architectural Access Board's Standards.
3. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading.
4. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.